

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT OTIS BURKE,
Plaintiff,

v.

ETHAN BARR, et al.,
Defendants.

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No. 5:22-cv-3464

ORDER

AND NOW, this 23rd day of February, 2024, for the reasons set forth in the Opinion issued this date, Defendants' Motion to Dismiss, *see* ECF No. 51, is **GRANTED** in part and **DENIED** in part as follows. **IT IS HEREBY ORDERED THAT:**

1. Count I Excessive Force is **DISMISSED with prejudice** as to Defendants Martin, Leath, Mengistaeb, Wendling, Steberger, Hackler, Aberts, Chirchello, Cora, and Jenkins;

2. Count I Intentional Infliction of Emotional Distress is **DISMISSED with prejudice** as to Defendants Lancaster County Prison, Steberger, Hackler, Aberts, Chirchello, and Jenkins;

3. Count II Excessive Force is **DISMISSED with prejudice** as to Steberger, Hackler, Aberts, Chirchello, Cora, and Jenkins.

4. Count III "Conditions of Confinement" is **DISMISSED without prejudice** as to Fischer.

5. Count IV is **DISMISSED with prejudice** as to Lancaster County Prison and Defendant Steberger.

6. In all other respects, the Motion is **DENIED**.¹

¹ For clarity's sake, all that remains is: Count I Excessive Force, Assault and Battery against Defendant Mitchell; Count II: Excessive Force, First Amendment Retaliation, Assault and Battery against Defendant Barr; and Count III First Amendment Retaliation against Defendant Fischer.

7. **Within twenty (20) days of the date of this Order**, Plaintiff may file an amended complaint as to any claims dismissed without prejudice.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.

JOSEPH F. LEESON, JR.

United States District Judge